IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 2598 of 2007(H)

PETITIONER:

R. RADHAKRISHNAN NAIR,
BUILDING INSPECTOR (UNDER SUSPENSION),
NEDUMANGADU MUNICIPALITY, MUNICIPAL OFFICE,
NEDUMANGADU.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND

RESPONDENTS:
----

1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **DIRECTOR OF URBAN AFFAIRS,**
   DIRECTORATE OF URBAN AFFAIRS, THIRUVANANTHAPURAM.

3. **SECRETARY,**
   NEDUMANGADU MUNICIPALITY, MUNICIPAL OFFICE,
   NEDUMANGADU.

4. **NEDUMANGADU MUNICIPALITY,**
   REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
   NEDUMANGADU.

BY ADV. SRI.P.RAMAKRISHNAN for R3 & R4
BY GOVT.PLEADER SRI. P. NANDAKUMAR for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P1: **COPY OF THE ORDER NO.G1/6557/02 DTD. 16/01/2007 OF THE SECRETARY, NEDUMANGADU MUNICIPALITY.**

3RD RESPONDENT'S EXHIBITS:

EXT.R3(A): **COPY OF MINUTES DTD. 26/10/06.**

EXT.R3(B); **COPY OF MINUTES DTD.11/12/06.**

EXT.R3(C): **COPY OF NOTE PUT UP BY THIS RESPONDENT DTD. 16/01/07.**

EXT.R3(D): **COPY OF NOTE MADE BY THE CHAIRMAN.**

EXT.R3(E): **COPY OF THE AGENDA OF THE MUNICIPAL COUNCIL MEETING DTD. 23/01/07.**

EXT.R3(F): **COPY OF THE DECISION OF THE MUNICIPAL COUNCIL.**

/TRUE COPY/

Kss

K.K. DENESAN, J.

= = = = = = = = = = = = = = = = =
W.P.(C) No. 2598 OF 2007 H
= = = = = = = = = = = = = = = = =

Dated this the 8th February, 2007

J U D G M E N T

The petitioner while working as Building Inspector in Nedumangadu Municipality was served with Ext. P1 order dated 16-1-2007 passed by the 3rd respondent-Secretary of the Municipality. The main contention urged by the petitioner against Ext. P1 is that the 3rd respondent has no authority to pass an order placing the petitioner under suspension.

2. In the counter affidavit sworn to by the 3rd respondent it is stated that the Chairman of the Municipality was aware of the fact that the petitioner shall be placed under suspension and since he was out of station he himself could not pass the order, and therefore, the 3rd respondent has passed Ext. P1 as instructed by the Chairman. Subsequently, the Chairman as well as the Municipal Council has ratified the action of the 3rd respondent in passing Ext. P1 order.

3. Heard both sides.

4. In my opinion, the reasons stated in the

counter affidavit of the 3rd respondent, even if factually true, will not save Ext. P1 order from being set aside by this Court, because this Court, after examining the whole scheme of the Act has held in ***Pradeep Kumar*** v. ***State of Kerala*** (2005 (4) KLT 396), that the Secretary of a Municipality is incompetent to place the officers/employees of the Municipality under suspension.

5. Ext. P1 is therefore set aside as one passed without jurisdiction. The petitioner shall therefore be deemed to have been in service treating Ext. P1 as nonest. I make it clear that this judgment will not stand in the way of the appropriate authority from taking appropriate action in accordance with law, if found necessary.

The writ petition is allowed of as above.

K.K. DENESAN
JUDGE

jan/